NON-APPLICANT

Date SEPTEMBER 8, 2015

Zoning Section
Los Angeles County Board of Supervisors
Room 383, Kenneth Hahn
Hall of Administration
500 West Temple Street
Los Angeles, California 90012

PROJECT NO./CUP NO.: R2013-02633-(3) / 2013-00135

APPLICANT: RANDALL NEECE AND JOSEPH TIMCO

LOCATION: 1558 WILL GEER ROAD

TOPANGA, CA 90290

MALIBU — Zoned District

Related zoning matters:

CUP(s) or VARIANCE No. 00-082-(3)

Change of Zone Case No. 00-082-(3)

Other

This is an appeal on the decision of the Regional Planning Commission in the subject case. This form is to be presented in person with a check or money order made payable to the "Board of Supervisors" (check or money order must be presented with personal identification), during regular business hours 8:00 a.m. to 5:00 p.m. prior to the appeal deadline at the above address. Contact the Zoning Section of the Board of Supervisors for information: (213) 974-1426.

This is to appeal: (Check one)

☐ The cost of Denial of this request: 843.00*

☑ The cost of Approval of this request: 843.00*

*Except for Subdivision appeals: $130.00 of this appeal amount is allocated to the Board of Supervisors' Hearing

Briefly, explain the reason for the appeal (attach additional information if necessary):

Please see attached

x

(Signed) Appellant

ETIENNE "JAKE" STEHELIN

Print Name

1630 WILL GEER ROAD

Address

TOPANGA, CA 90290

City/Zip

818-298-7611

Day Time Telephone Number

jake@popemold.com

E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

- Many years of non-compliance, and violations.
- Peace and quiet enjoyment of the neighborhood significantly diminished by barking dogs, foul odors, and increased traffic.
- Large-scale commercial businesses do not belong in residential neighborhoods!

x Fran Roberts - Stehelin
(Signed) Appellant

FRAN Roberts - Stehelin
Print Name

1630 Will Geer Road
Address

TOPANGA 90290
City/Zip

310-455-2632
Day Time Telephone Number

frranny@verizon.net
E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

see attached

L. Elsie, LLC (Owner of Record)

x _____, Manager
(Signed) Appellant

Thomas Doniger, Manager
Print Name

1370 W. Will Geer Rd
Address

Topanga, CA 90290
City/Zip

213-675-1880
Day Time Telephone Number

Tom@dongerandfetter.com
E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

- this is a residential neighborhood – no businesses allowed
- I have 2 unpermitted businesses on either side of me
- CUR violated terms of CUP from the beginning – owners bragged to me of having 175 dogs one holiday – no fines or repercussions
- polluted environment for years – no fines or repercussions
- abuse & deaths of dogs, abuse of employees, clients, myself & other neighbors
- illegal zone change from A1 to A2 of Canyon View
- lower property values – living next to a Kennel
- water use by Kennel NOT SUSTAINABLE!

Illegal and no regulation.

x _____
(Signed) **Appellant**

CATHERINE McCLENAHAN
Print Name

1500 WILL GEER RD
Address

TOPANGA CA 90290
City/Zip

310-428-3995
Day Time Telephone Number

Cmcclenahan@mac.com
E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

See attached.

x William M Fagerbakke
(Signed) Appellant

William M. Fagerbakke
Print Name

1500 Will Geer Rd
Address

Topanga Ca 90290
City/Zip

310 455 2470
Day Time Telephone Number

ramsrmoi@aol.com
E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

See Attached

x Susan K. Schmitt
(Signed) Appellant

Susan K. Schmitt
Print Name

1291 Will Geer Rd
Address

Topanga CA 90290
City/Zip

310-455-2081
Day Time Telephone Number

susiekschmitt@gmail.com
E-mail Address

Briefly, explain the reason for the appeal (attach additional information if necessary):

See Attached

x Sahaja Douglass
(Signed) Appellant

Sahaja Douglass
Print Name

21570 Hillside Drive
Address

Topanga, CA 90290
City/Zip

310-570-7429
Day Time Telephone Number

sahajadouglass@gmail.com
E-mail Address

Reason #1 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

EASEMENT VIOLATIONS

The Regional Planning Commission lacked jurisdiction to issue the subject CUP to the Kennel and its issuance of the CUP was, therefore, an *ultra vires* act for the following reasons (among others).

First, the Commission incorrectly found that the A-2 zoned Kennel had "sufficient legal access" to operate its commercial enterprise, although such access was by way of easements over privately owned, A-1 zoned properties. Use of A-1 zoned easements for access to a commercial business constitutes a zoning violation, as a matter of law.

Second, use of easements, granted for access to a residence, over privately owned, A-1 zoned properties, to access a commercial enterprise overburdens the easements and violates the rights of the servient landowners, as a matter of law.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #2 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

A HISTORY OF ILLEGAL OPERATIONS

1998-2000

Operated illegal kennel with over 30 dogs when zoning allowed 3 dogs.

2000-2002

Having been cited by County, kennel applied for a CUP. Operated under "Clean Hands Waiver" wherein they agreed to keep no more than 10 dogs. Routinely had 30 to 50.

Admitted same at hearing; cited financial needs as excuse.

2002-2012

Operated under CUP limiting dogs to 30. According to employee testimony, had as many as 150.

2012-2015

Operated illegally, CUP expired November, 2012.

May, 2015-August, 2015

At the hearing in May, the Commission ordered the kennel to limit dogs to 30; The Kennel owners said they **would not** comply, that they would limit dogs to 60 instead.

The Kennel owners DO NOT deserve another chance for future violations.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #3 for Rejection of Kennel CUP

THIS IS NOT "A LOCAL SERVING BUSINESS"

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

Canyon View Ranch (CVR) is not serving local clients. The vast majority of their clients come from outside of Topanga. Less than 5% of support letters came from Topanga, while about 95% of letters of opposition to the Kennel came from Topanga residents.

And near-zero clients are on the Mesa, but 100% of the burden is.

We do not know of ONE current resident on Will Geer Road that supports the Kennel, and yet, the Kennel has listed people that either no longer live here, or who no longer support the Kennel, as supporters.

CVR is also not providing a critical service. There already is a kennel in Topanga, *Topanga Pet Resort*, which provides both boarding and training. Also, Topanga Pet Resort is on a major road and benefits from county water. This is a much more ideal location for such a business, unlike the Mesa.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #4 for Rejection of Kennel CUP

FINDINGS BY STAFF ARE INCORRECT

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

The conclusions proposed by County Staff to the Regional Planners state, in part, that:

"The proposed use...will not adversely affect the health, peace, comfort or welfare...and will not be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity..."

The past and proposed use at the site *HAS* and *WILL* adversely affect the health, peace, comfort and welfare of those residing in the surrounding area, and *HAS* and *WILL* be materially detrimental to the use, enjoyment, and valuation of the property of others.

Local Realtors have estimated that nearby properties will lose 15%, or more, of their value if this C.U.P. is issued. That will easily be a loss of over $2,000,000. in value.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #5 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

BURDEN ON THE NEIGHBORHOOD

Traffic

The traffic study done by the kennel was dubious and should have been conducted by a third party. CVR modified their behavior just for their own traffic study. 100 dog owners plus 17 employees plus deliveries **everyday** clearly overburden a narrow, winding cul-de-sac.

Noise

The noise levels of the past 3 months are not representative of the noise levels of the past 17 years. Once granted another CUP, the kennel will go back to its old ways: doing exactly what it wants to. They know they will not have to worry about ANY enforcement by the County.

Foul Odors

Staff promises that no odors will leave the kennel property. Containing odors from such large amounts of feces and chemicals is physically impossible.

Diminished Property Values

Potential buyers of homes near any dog kennel would surely demand a discount due to the undesirable noises, smells and traffic.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #6 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

BURDEN ON THE ENVIRONMENT

Bleach

Thousands of gallons of bleach have been dumped into the watershed by the kennel, with no repercussions.

Sewage

For 6 years, the kennel dumped raw sewage onto the Stehelin property. They finally installed a septic system, but since there is no permit on file at Health Services, there is no way to know what the capacity of this system is, or how long it might last.

Water Usage

We on the Mesa rely on wells for water, and several wells have already failed, including 2 on the Kennel property, and several neighbor's wells. This large business with its pools and lush landscaping threatens our water source. Employee testimony states that 25 loads of laundry are done each day. The Kennel uses too much water for an area without city water.

If this drought continues, all of our wells may go dry.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #7 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

A DISASTER WITHIN A DISASTER

Kennel owners say they have an evacuation plan, but can they be expected to follow it? How many of the conditions of the now expired C.U.P. have they simply chosen not to adhere to?

When frantic dog owners hear of a disaster in Topanga, such as a brush fire, which will happen, will they sit idly by waiting for their pets to be evacuated by the kennel, or will they take it upon themselves to go get them?...or send their assistants?...or both? One car crash on Hillside Drive can, and has, blocked access for hours. Hillside Drive is the ONLY way in or out of the Mesa neighborhood.

Residents on Hillside and Will Geer are very concerned about emergency services being blocked by excessive traffic to and from the Kennel.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Reason #8 for Rejection of Kennel CUP

PROJECT NO. R2013-02633-(3)

C.U.P. NO. 2013-00135

BAD BUSINESS PRACTICES

Animal Abuses

Kennel cough, Giardia, dogs being returned to their owners with obvious emotional scars and physical injuries, and dog deaths. These are just some of the abuses that have been reported by employees and clients of the Kennel, and are in the record.

Treatment of employees, etc...

There are letters on file from employees, clients, and neighbors detailing how they were mistreated and threatened by the Kennel owners. It seems as though all one has to do to be threatened with a lawsuit is disagree with the Kennel owners.

Treatment of County Employees

The Kennel owners refused to let County inspectors on to their property, but later allowed scheduled inspections, so long as attorneys for the Kennel were present.

Supervisor's Response

- ☐ Agreed
- ☐ Irrelevant
- ☐ Insufficient Evidence
- ☐ Not Our Jurisdiction
- ☐ Other: _____

Filed: September 8, 2015 By: Neighbors for a Peaceful Mesa In: Los Angeles County, CA

Thank You

for

Your Fair

Consideration

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Thomas Doniger

Henry D. Fetter
Of Counsel

February 25, 2015

The Honorable Esther L. Valadez, Commissioner
The Honorable Laura Shell, Commissioner
The Honorable David W. Louie, Commissioner
The Honorable Curt Pedersen, Commissioner
The Honorable Pat Modugno, Commissioner
Department of Regional Planning
320 W. Temple Street, 13th Floor
Los Angeles, California 90012

Re: **Project No. R2013-02633-(3); CUP No. 201300135**
Conditional Use Permit to Allow and Expand Maintenance of a Dog Kennel at 1558 Will Geer Road, Topanga, California, Petitioned by Randall Neece and Joseph Timko

Dear Commissioners:

I am writing you on behalf of L. Elsie, LLC (the "LLC"), the record owner of the parcel of real property commonly described as 1370 Will Geer Road, Topanga Canyon, California 90290 (the "Elsie property").

The LLC opposes both the continued and proposed expanded, commercial use as a kennel (the "Kennel") of the property at 1558 Will Geer Road (the "Kennel property"). As is shown below, such commercial use violates the rights of the LLC and other property owners along Will Geer Road, whose properties are the servient tenements for the Kennel's easements for access. As is also shown below, the Kennel's use of the neighbors' agricultural/residential zoned easements for access to its commercial

enterprise constitutes a zoning violation, as a matter of law. Therefore, the issuance, in 2003, of the Conditional Use Permit ("CUP") allowing commercial kennel use was an *ultra vires* act by the Department of Regional Planning. Continuance or issuance of a similar CUP now would also constitute an *ultra vires* act by the Department.

The above legal issues, as well as others described below, were not identified or considered in the FINDINGS OF THE BOARD OF SUPERVISORS AND ORDER - CONDITIONAL USE PERMIT NUMBER 00-082-(3) (the "Findings") made in connection with the granting of the Kennel's now expired CUP, effective as of January 9, 2003. However, Los Angeles County Code §22.56.040 requires that these important factors be considered and reflected in any findings, as they bear directly on the issues as to which an applicant for a CUP bears the burden of proof.

As provided by the Los Angeles County Code §22.56.040, the Kennel bears the burden of proof to substantiate that the requested use will not:

A. 1. Adversely affect the health, peace, comfort or welfare of persons residing . . . in the surrounding area;

2. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site.

The Kennel also bears the burden of proof to show that the Kennel is adequately served:

C. 1. By highways or streets of sufficient width, and improved as necessary to carry the kind and quantity of pedestrian, bicycle, and other vehicle traffic such use would generate; and

2. By other public or private service facilities as are required.

As is shown below, the Kennel is not "adequately served" by "highways or streets" or by any other legal access for its commercial use. The only access which exists is by way of easements for residential use over the privately owned land of the Kennel's neighbors. The Kennel's use of such agricultural/residential easements for its commercial purpose overburdens the Kennel's easements, violates the real property rights of its neighbors and constitutes a zoning violation, as a matter of law. Further, the Kennel's

illegal use of easements through its neighbors' land adversely affects the peace and comfort of its neighbors and is materially detrimental to the use, enjoyment and valuation of the Elsie property and other neighbors' property. The Kennel's commercial use is plainly out of place and unsuited to the neighborhood.

The Kennel and the Elsie Property

The Elsie property consists of 20 acres located several parcels to the south of the Kennel property along Will Geer Road. The Elsie property is shown as parcel number 12 on Exhibit 1, attached hereto. Will Geer Road, a privately owned road, bisects the Elsie property into two 10-acre parcels, one lying to the west of Will Geer Road and one lying to the east of Will Geer Road. The LLC owns in fee simple all of Will Geer Road within the boundaries of its parcel.

Access to the Elsie property, like access to the Kennel property, is along Will Geer Road from Hillside Drive, the steep, narrow and winding road leading from Topanga Canyon Blvd. to the mesa. Will Geer Road lies on the top of a very quiet mesa, high above Topanga Canyon. There is no traffic on the Road, except traffic to and from the dozen or so properties on Will Geer Road, because Will Geer Road dead ends at its northern end, about a mile from Hillside Drive. The Kennel property is very close to the northern dead end of Will Geer Road. Therefore, all traffic to the Kennel must travel through the middle of the Elsie property, past all but a few of the houses on Will Geer Road and almost the full length of Will Geer Road.

Access to the Kennel Is by Private Easements over Will Geer Road

It appears that each of the parcels along Will Geer Road has received an easement appurtenant from each other parcel along Will Geer Road for "road and utility purposes." The easements for "road purposes" appear to have been granted in 1961–1962, and easements for "utility purposes" appear to have been granted as late as 1989.

The Elsie property, like the other parcels along Will Geer Road, is burdened by easements for road and utilities which benefit the other parcels along Will Geer Road, including the Kennel property. Each of the property owners along Will Geer Road owns in fee simple that portion of the Road within his parcel's boundaries and each receives the benefit of easements appurtenant for road and utility purposes over Will Geer Road from neighboring properties.

The Kennel's Easements Were Granted for Residential, Not Commercial, Use

While I have not conducted a complete investigation of each of the grants and/or reservations of easements for access along Will Geer Road, those that I have seen do not describe the easements for access other than as for "road purposes." Some of the utility easements are described with more specificity. Where easements for access are not more specifically described, the nature and scope of the permitted use of the easement is determined by reference to the use at the time of the grant or reservation of the easement. This principle is stated as follows in California's leading treatise on real estate:

> **The use is limited to original creation.** Once an easement has been created 'both parties have the right to insist that so long as the easement is enjoyed it shall remain substantially the same as it was at the time the right accrued, entirely regardless of the question as to the relative benefit and damage that would ensue to the parties by reason of a change in the mode and manner of its enjoyment.' Miller & Starr, *California Real Estate*, Easements §15:54 at p. 15-176 (3d. ed. 2011, hereinafter "*Miller & Starr*") [Emphasis in original.]

This principle means that "[o]nce the extent of an easement's use has been established, the easement owner cannot subsequently enlarge its character so as to materially increase the burden on the servient tenement." *Id.* Again, as stated in *Miller & Starr*:

> **Use cannot increase the burden on the servient tenement.** The owner of an easement cannot change or increase the use of the easement in any manner that imposes a new or greater burden on the servient tenement without the consent of the servient owner. *Miller & Starr*, Easements §15:55 at p. 15-179. [Emphasis in original.]

At the time, in 1961 and 1962, when the easements for the benefit of the Kennel property were created for "road purposes," there was no kennel on the Kennel property, as acknowledged by the Kennel in the Project Narrative it has submitted. That Project Narrative states that the Kennel operation began in 1998. Nor is there evidence of any

other commercial use of the Kennel property prior to that date. See also, Finding Nos. 6 and 20. Accordingly, under the applicable legal principle quoted above, the easements over the Elsie property and other neighboring properties, were limited to "road purposes" for access to any then-existing residence(s) and were not granted to allow the greater burden of a commercial use. Thus, even the present commercial use of the easements by the Kennel (and its customers who daily drive on Will Geer Road to deliver and pick up their dogs) surcharges the easements and violates the rights of the Kennel's servient neighbors along Will Geer Road. Any commercial use constitutes precisely the "greater burden on the servient tenement" proscribed by law.

Commercial Use of the Kennel's Easements Overburdens the Easements And Additional Commercial Use Will Further Overburden Such Easements

The proposed expansion of the Kennel's commercial activity (apparently now conducted pursuant to an expired permit) will necessarily require increased commercial use by the Kennel of the residential easements over Will Geer Road, as to which the Kennel property is the beneficiary and as to which the neighboring properties along Will Geer Road, including the Elsie property, are the burdened properties or servient tenements. It is not possible to more than triple the scope of the Kennels's commercial use (from 30 to 100 dogs) without a substantial concomitant increase in use of the easements along Will Geer Road for access.

In the Kennel's Zoning Permit Application, it seeks a "Continued (Renewal)" of its expired permit. In its Project Narrative, submitted with its Application, the Kennel represents that it "is currently operating under terms and conditions of Conditional Use Permit Case Number 00-082-(3)." That permit, now expired, provides, in paragraph 26 f, that "The dog kennel and dog training facility shall be limited to a maximum of 30 dogs on the premises at any one time." However, the Narrative submitted by the Kennel boasts that "Nearly one hundred dogs daily enjoy the spacious training and boarding facility." Whether the Kennel is in compliance with the expired Permit and has only 30 dogs on site or is flouting the Permit and has 100 dogs on site, the Kennel use should be terminated for the reasons stated below. And certainly, the Kennel cannot augment its legal rights, as against its neighbors or before this Commission, by violating the terms of the Permit it sought and accepted – a violation which strongly suggests that any new or renewed permit will be similarly flouted if it is in the economic interest of the Kennel to do so.

The Kennel's Commercial Use of its Easements Violates the Rights of the Owners of the Servient Tenements along Will Geer Road

The principle prohibiting commercial use of lesser-zoned residential/agricultural easements described in *Miller & Starr* above is illustrated, on facts "on all fours" with those presented by the Kennel's existing commercial use and petition for expanded commercial use, in *Bartholomew v. Staheli*, (1948) 86 Cal.App.2d 844, 195 P.2d 824. In *Bartholomew*, the plaintiff, Bartholomew, owned real property over which a dirt roadway ran from a state highway to the defendants' adjacent farm property. The defendants used their adjacent farm property as a farm and home and used the roadway over Bartholomew's land to travel from the highway to their farm. However, the defendants changed the use to which they put their farm, organizing a commercial nudist colony operated for profit. The defendants rented cabins and operated a public dining room and store, among other commercial activities at the nudist colony.

Bartholomew objected to the increased use of the roadway caused by the defendants' commercial use of their farm as a nudist colony and sued to enjoin the increased burden on his servient tenement. The trial court enjoined the defendants from using the roadway for commercial access to their commercial enterprise and the court of appeal affirmed the trial court.

> The defendants Emma Staheli and Victor Staheli were enjoined from using a private road-way across plaintiffs' land, except for the purpose of traveling thereon to and from their adjoining farm. The injunction prohibits defendants from overburdening their easement to use their private right of way over plaintiffs' land by inviting greatly increased travel of vehicles by means of which members and customers of defendants' nudist colony, resort and store were encouraged to patronize those enterprises conducted for pecuniary profit.

Bartholomew is the controlling decision governing the Kennel's application for a CUP. Like the defendants in *Bartholomew*, who were enjoined from overburdening the road-way easement by commercial use, the Kennel, by its commercial use, is overburdening the easements granted for residential "road purposes" by each of the land owners along Will Geer Road, including the LLC. The Kennel's existing commercial use overburdens the Kennel's easements and violates these landowners' rights. The Kennel's

requested increased commercial use will constitute an even more egregious violation of their rights.

The Overburdening of the Neighbors' Easements Adversely Affects the Peace, Comfort, Use, Enjoyment and Valuation of the Elsie And Other Neighboring Properties

The overburdening of the Elsie property easement (and other easements on Will Geer Road) by the Kennel is not an abstract legal point without impact in the real world. Will Geer Road runs through the very center of the Elsie property and near to the house site. It runs near other residences on Will Geer Road, as well. The mesa is very quiet and every car, van or truck coming down Will Geer Road can be heard long before it even enters the Elsie property. There are speed bumps on Will Geer Road and some are within the Elsie property. Each vehicle must brake, slow down and then accelerate at each speed bump, with all of the attendant noises. The passage of each vehicle is, therefore, a disturbance to the quiet enjoyment of properties on the mesa – quiet enjoyment which is a primary reason people move to the mesa. While I will leave it to others to quantify the traffic attributable to the Kennel's commercial enterprise, I have observed and heard the stream of cars transporting dogs to and from the Kennel on those occasions when I have been present on the Elsie property. Such Kennel traffic constitutes a substantial portion of the traffic on Will Geer Road, a genuine disturbance and a material interference with the quiet enjoyment of the properties along Will Geer Road. As such, the Kennel's illegal, commercial use of Will Geer Road amounts to nuisance under *Civil Code* §§ 3479 and 3480.

Further, this Kennel traffic increases the cost of maintaining Will Geer Road, a cost born by the LLC and other properties along Will Geer Road. The Kennel should not be permitted, by its overburdening of easements, to increase the road maintenance costs for its neighbors. As is obvious, an increased flow of traffic – literally through the middle of the Elsie property and adjacent to the other properties – diminishes the value of each such property.

The Kennel's Use of Easements over Will Geer Road to Serve its Commercial Enterprise Constitutes a Zoning Violation, as a Matter of Law

Another legal principle directly prohibits the Kennel's use of easements over Will Geer Road for access to its commercial enterprise. The zoning and legally permitted uses

of easements must allow for, and be consistent with, the nature of the property to which such easements provide access. Here the zoning for the Kennel's Will Geer Road easements is not consistent with the Kennel's commercial use and, therefore, the easements cannot, as a matter of law, be used by the Kennel for access to its commercial enterprise. This principle is illustrated by *Teachers Insurance and Annuity Association v. Furlotti*, (1999) 70 Cal.App.4th 1487, 83 Cal.Rptr.2d 455.

In *Teachers*, a residential apartment building and a commercial building each occupied parcels which extended to the center of a private alley between the two buildings. The alley constituted the boundary between the commercial zone occupied by the commercial building to the south and the residential zone occupied by the apartment building to the north. The predecessor owners of the two properties had executed reciprocal easements allowing access and use by both parcels of the entire alley for servicing the two buildings.

Furlotti, the owner of the apartment building, grew tired of the noise and disturbance associated with the commercial use of the alley and constructed a chain link fence down the center of the alley, along the property line. Furlotti's fence denied the commercial building use of the easement over the apartment building's half of the alley and Teachers sued to "require removal of the fence and repair of the easement area." The trial court granted an injunction requiring that the fence be removed, based upon Teachers' contention that the "[Declaration of Reciprocal Easements] was an enforceable agreement which entitles the parties to use the easement area for access, but which was violated by the Furlottis when they constructed the fence."

The court of appeal reversed the trial court, relying upon a principle directly applicable to the Kennel's use of its easements along Will Geer Road for commercial purposes. "The Furlottis argue the easement purports to grant commercial use of [the apartment building's] portion of the alley which is zoned for residential use only with the result the use is a zoning violation. The Furlottis are correct."

In reaching its decision, the *Teachers* court relied upon a California case, *City & Co. of S.F. v. Safeway Stores, Inc.*, (1957) 150 Cal.App.2d 327, 310 P.2d 68, in which the court concluded that "[*t*]*hus the use of property zoned for residence for the vast amount of public ingress and egress necessarily connected with a store of the Safeway type, is a violation of a residential zoning ordinance.*" [Emphasis in original.] The *Teachers* court also relied on similar decisions from other jurisdictions which hold "that

the use of land in a residentially zoned district to gain access to land or buildings in a commercially zoned area constitutes a commercial use in violation of the zoning restrictions of the residential district."

The *Teachers* holding, as applied to the instant circumstances in which the Kennel seeks to use private, agricultural/residential easements along Will Geer Road for access to its commercial enterprise, requires that the burdened or servient properties along Will Geer Road be zoned for a similar commercial use – otherwise the Kennel's use of the easements is a zoning violation. Certainly the Elsie property is not zoned for commercial use; it is zoned for agricultural use. The other properties along Will Geer Road are similarly zoned. Therefore, the Kennel's current use of its easements along Will Geer Road is illegal and any expanded use would also be illegal.

The Findings made in connection with the granting of the Kennel's CUP, effective as of January 9, 2003, were submitted to the Board of Supervisors on November 27, 2002, by the County Counsel's office. Those Findings confirm that, although the Kennel then received a change in zoning from A-1-1 (Light Agricultural) to A-2-10-DP (Heavy Agricultural), the "[s]urrounding zoning consists of A-1-1 to the north, south, east and west." Finding No. 5. Finding No. 8 acknowledges that "operation of a dog kennel/dog training facility . . . is prohibited in the pre-existing A-1-1 zone." Under the holding in *Teachers* and other authorities cited above, the Kennel's use of lesser zoned easements for access to its higher zoned, commercial enterprise constitutes a zoning violation, as a matter of law.

Finally, although the special change in zoning to A-2-10-DP, previously obtained by the Kennel, will not be further explored in this letter, that change likely constitutes illegal "spot zoning," both procedurally and substantively. Any permits or other benefits granted on the basis of that zoning were and are, therefore, legally infirm.

Issuance of the Requested CUP Effects an Unconstitutional Taking

Granting a CUP for commercial kennel use to the Kennel effectively "takes" (in the federal and state constitutional sense) from the owners of the servient tenements additional easement rights (not previously deeded) and grants those additional easement rights to the Kennel. Even if a governmental body were to properly "take" such invasive easement rights from the servient landowners, it would have to compensate the landowners for such an exercise of the right of eminent domain. See, *Miller & Starr*, Eminent Domain §30A:29 at p. 30A-70, 71; "Here, the Government's attempt to create a

public right of access to the improved pond goes so far beyond ordinary regulation or improvement for navigation as to amount to a taking...." *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62 L.Ed.2d 332 (1979). Moreover, such a taking cannot be accomplished, procedurally or substantively, by issuance of a CUP. Eminent domain proceedings would be required for such a taking.

Further, such a taking would not be by a governmental body for a public purpose – it would be a taking, without compensation, by the County from neighboring landowners, who neither seek nor receive a *quid pro quo* in the form of a permit or other benefit from the County. Such a taking would be solely to enable the private operation of a commercial enterprise. The controlling taking cases, *Nollan, Dolan, Loretto* and *Lingle*, do not even consider such an egregious taking, involving the taking of invasive easement rights from landowners, who seek no governmental benefit, and the transfer of such easement rights (without compensation) to a different landowner, who is seeking a governmental permit. Issuance of the requested CUP for kennel use, which would effect such a taking, cannot conceivably pass constitutional muster on these egregious facts.

The Department of Regional Planning Lacks the Power to Issue the Requested CUP

Even if all of the land owners along Will Geer Road were to agree to allow their easements to be overburdened by the Kennel, such land owners do not have the power to change the zoning of their properties. Any such agreements to permit overburdening of the easements (or to accept the Kennel's "spot zoning") would be invalid and ineffective, as specifically held by the court in *Teachers*. Therefore, use of the existing easements over agricultural/residential zoned property by the Kennel for access to its commercial enterprise would remain a zoning violation – even if the servient tenements consented to such use.

Where a CUP violates applicable zoning law, it is beyond the authority of the issuing agency to issue, as *Neighborhood Action Group v. County of Calaveras,* (1984) 156 Cal.App.3d 1176, 1184, 203 Cal.Rptr. 401 holds.

> Although use permits are not explicitly made subject to a general plan meeting the requirements of state law, that condition is necessarily to be implied from the hierarchical relationship of the land use laws. To view them in order: a use permit is struck from the mold of the zoning law (§ 65901); the zoning law must comply with the adopted

> general plan (§ 65860); the adopted general plan must conform with state law (§§ 65300, 65302). The validity of the permit process derives from compliance with this hierarchy of planning laws. These laws delimit the authority of the permit issuing agency to act and establish the measure of a valid permit.
>
> ***
>
> Put another way, the scope of authority of the agency to enact a general plan and zoning ordinances and to apply them is governed by the requirements of state law. A permit action taken without compliance with the hierarchy of land use laws is *ultra vires* as to any defect implicated by the uses sought by the permit.

The Findings made in 2003 for issuance of the Kennel's CUP failed to raise, acknowledge, address or consider: (1) that the Kennel's access consisted entirely of agricultural/residential easements for "road purposes" over neighboring landowners' private parcels; (2) the nature, scope and legality of the Kennel's commercial use of such easements and the correlative rights of the owners of the servient tenements; (3) the legal and physical effects of the Kennel's commercial use of the easements upon the servient tenements; (4) the zoning violation created by the Kennel's use of A-1-1 zoned easements for access to its A-2-10-DP zoned commercial business; and (5) the change of zoning granted to the Kennel, constituting illegal "spot zoning." [Whether the Findings would satisfy the legal standard for such findings stated in *Topanga Assoc. For a Scenic Community v. County of Los Angeles*, (1974) 11 Cal.3d 506, 113 Cal.Rptr. 836, is a question which need not be answered now in light of the fact that the Kennel's 2003 CUP has expired and a new application for a CUP is now before this commission.] Consideration of these vital issues in 2003 would no doubt have required rejection of the Kennel's application for the CUP, due to the zoning violation "implicated by the use sought by the permit" and the "spot zoning," as well as for other reasons. Issuance of the CUP for commercial kennel use was then *ultra vires*, as shown above by *Neighborhood Action Group*. Issuance now of a CUP for maintenance or expansion of that use would be equally *ultra vires*.

The issuance of the prior CUP to the Kennel and any issuance of another or

continued CUP for commercial kennel use constitute *ultra vires* acts, zoning violations, unconstitutional "takings" without compensation and without required eminent domain proceedings and violation of the servient neighbors' real property rights. As such, if issued, such a CUP would not be subject to limited judicial review only for abuse of discretion or to determine if the findings were supported by the evidence. The reviewing court, in considering the validity of such a CUP, would "exercise 'independent judgment' in determining whether the agency action was 'consistent with applicable law.'" *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, (2007) 157 Cal.App.4th 997, 1004, 68 Cal.Rptr.3d 882.

Respectfully submitted,

Thomas Doniger

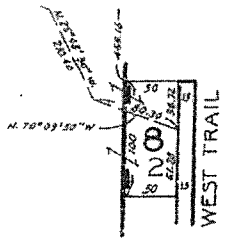
cc:
Travis Seaward, Regional Planner
Gina Natoli, Supervising Regional Planner
County Counsel, c/o Commission Services

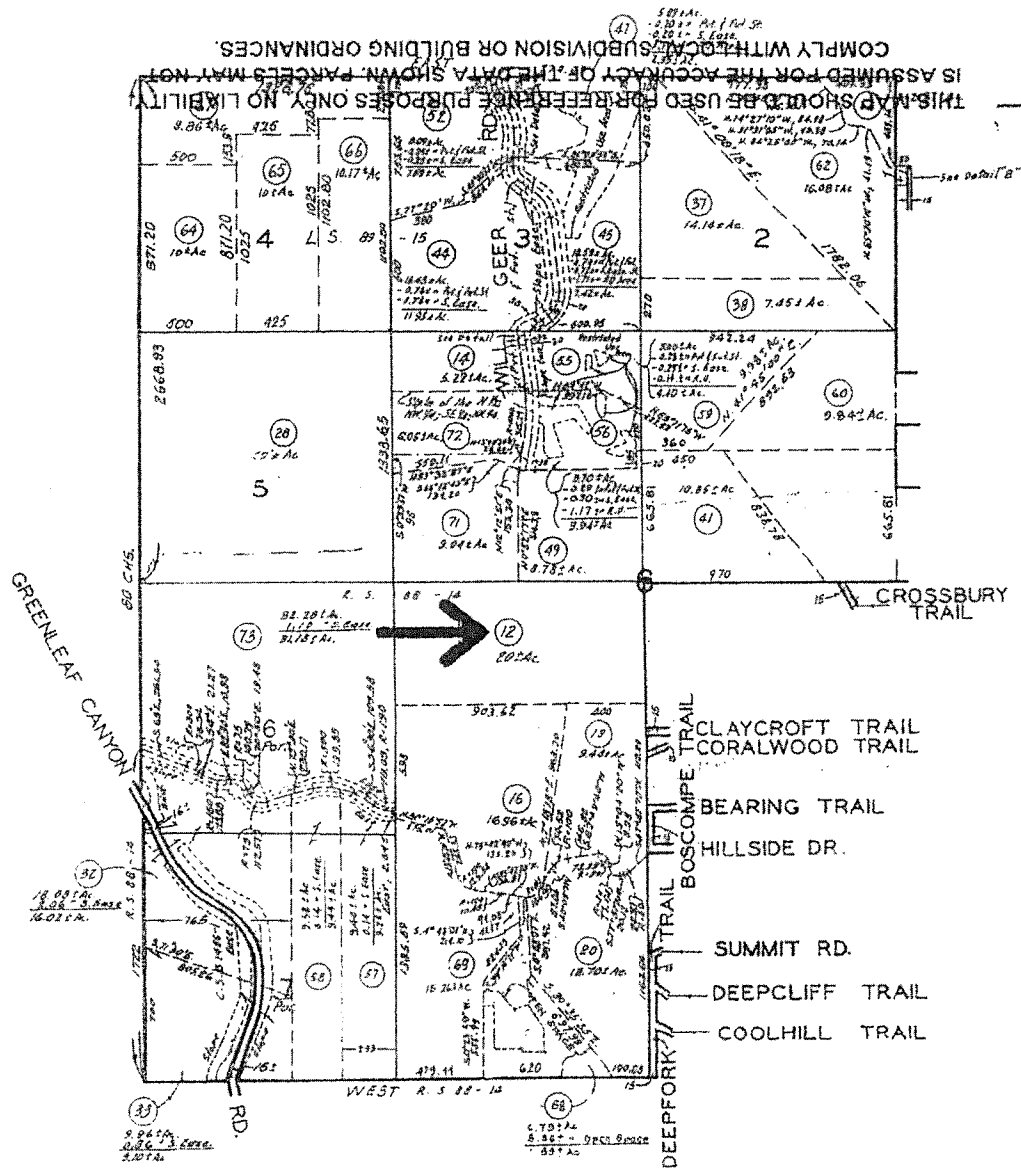
TD:lmw

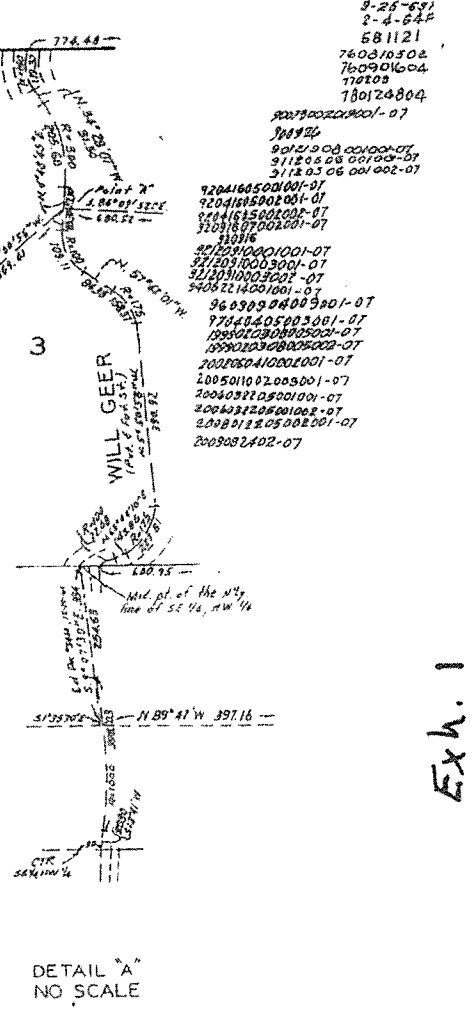
4440 | 7

CALE 1" = 600'

2010







T. 1 S., R. 16 W.

TRACT NO. 8545

M. B. 108-75-77

Exh. 1

CODE
1653

FOR PREV. ASSM'T. SEE: 4440-3,7

SEP 18 2009

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

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Henry D. Fetter
Of Counsel

May 8, 2015

The Honorable Esther L. Valadez, Commissioner
The Honorable Stephanie Princetl, Commissioner
The Honorable David W. Louie, Commissioner
The Honorable Curt Pedersen, Commissioner
The Honorable Pat Modugno, Commissioner
Department of Regional Planning
320 W. Temple Street, 13th Floor
Los Angeles, California 90012

Re: Project No. R2013-02633-(3); CUP No. 201300135
Conditional Use Permit to Allow and Expand Maintenance of a Dog Kennel at 1558 Will Geer Road, Topanga, California, Petitioned by Randall Neece and Joseph Timko. Response to County Staff Analysis.

Dear Commissioners:

I am again writing you on behalf of L. Elsie, LLC (the "LLC"), the record owner of the parcel of real property commonly described as 1370 Will Geer Road, Topanga Canyon, California 90290 (the "Elsie property"). The purpose of this letter is to reply to that portion of the now-published Staff Analysis which addresses the points regarding legal access made in my initial letter to you, dated February 25, 2015, opposing issuance of the requested CUP.

Based upon a memorandum prepared by the Applicants' counsel, Cox Castle Nicholson, the County has concluded that "the facility [the Kennel] has sufficient physical and legal access to satisfy the burden of proof..." Staff Analysis at page 7. The County's conclusion is incorrect for the reasons stated below.

In reliance upon *LT-WR, LLC v. California Coastal Commission,* 151 Cal. App. 4th

770, 806 (2007), the County has concluded that "whether [the Kennel's] commercial use of the road exceeds the scope of the [Kennel's easement over the neighboring private properties] is a legal question for a court to resolve, not one for staff or the Regional Planning Commission to determine." Staff Analysis at page 7. However, neither *LT-WR* nor any other authority supports the County's argument that it is free to violate the common law of California and the established and recorded real property rights of neighboring landowners, in issuing CUP's.

Ironically, *LT-WR,* relied upon by the Staff, supports denial of the requested CUP, not its issuance. *LT-WR* involved the denial by the Coastal Commission of permits to develop certain real property. The case presented many issues but was cited in the Cox Castle Memorandum and in the Staff Analysis for the principle that the "California Coastal Commission did not have authority to determine existence of prescriptive easement based solely on evidence of historic use." Staff Analysis at page 8. In *LT-WR*, the Coastal Commission had denied a developer the right to erect a gate and "no trespassing" signs over the developer's privately owned road which the Commission had speculated might be subject to public prescriptive rights of access, based upon statements by "numerous people." The *LT-WR* Court reversed the Commission, holding that it did not have legal authority to establish such prescriptive rights and then base its administrative action upon such "prescriptive rights."

The applicants argue, and the Staff Analysis concludes, that L. Elsie, LLC is asking this Commission to do precisely what the Coastal Commission did in *LT-WR* – "determine" the easement rights of the LLC and other servient land owners along Will Geer Road and base its ruling on that determination. However, unlike the unrecorded and undetermined easement rights in *LT-WR*, the easement rights of the Kennel's neighbors along Will Geer Road, including the LLC, were created by deed and recorded long ago. The Regional Planning Commission and its Staff regularly recognize the recorded real property rights of applicants and their neighbors – and do so here in their Staff Analysis. There is no need here for the Commission to "determine" the nature or scope of the easements at issue here upon which the Kennel must rely for access. As the County's records show, they are described easements over A-1 zoned property for residential access – not legal for access to an A-2 zoned commercial enterprise. *LT-WR* does not prevent the Commission's recognition of the neighbors' recorded real property rights because the Commission is not here, as in *LT-WR*, required to make any "determination" of such real property rights. The Commission is, however, required, as a matter of law, to recognize them.

In *LT-WR*, the Court of Appeal upheld the developer's right to erect a gate barring access to its property, holding that: "Inherent in one's ownership of real property is the right to exclude uninvited visitors. [Citations.] The Commission's decision would deny LT-WR that right." Here, the owners of the servient tenements for the Kennel's easement for access along Will Geer Road have precisely the same right to exclude any use of the easement beyond the scope of the easements they granted. As a matter of law, the Kennel's commercial use of the easement is beyond the scope of such grants.

The Staff Analysis argues that the wholesale violation of the neighbors' easements by the Kennel, effected by the requested CUP, is legally permitted by the Section 22.24.090.A of the County Code. That section provides as follows:

> 22.24.090 Uses subject to director's review and approval.
> If site plans therefor are first submitted to and approved by the director, premises in Zone A-1 may be used for:
> A. The following uses, subject to the same limitations and conditions provided in Section 22.20.090 (Zone R-1):
> -- Access to property lawfully used for a purpose not permitted in Zone A-1.

Plainly, this Section is intended to apply where a property has received approval to conduct a non-conforming use in order to allow that property (not all other private properties which might provide access to the subject property) to be used for access to the non-conforming use. The inclusion of this provision for access in the Section accommodates the principle that access to non-conforming uses must also be zoned for the non-conforming use – a principle relied upon by L. Elsie, LLC in opposing the Kennel's requested CUP.

Section 22.24.090.A does not mean, as the Staff Analysis argues, that the Commission or the Director has the power, by the mere granting of a CUP to one property, to automatically (without notice, hearing etc.) re-zone all private properties which provide access to that property receiving the CUP. Nor does it mean that the Regional Planning Commission or its Director has the power to automatically enlarge the scope of all existing easements, over other private properties, for access to the property receiving the CUP – without notice and opportunity to be heard to such other property owners. Nor does the Section, *sub silentio*, abrogate or reverse the rulings in *Teachers Insurance and Annuity Association v. Furlotti*, (1999) 70 Cal.App.4th 1487, 83

& Co. of S.F. v. Safeway Stores, Inc., (1957) 150 Cal.App.2d 327, 310 P.2d 68, discussed below. Indeed, how could Staff advance such a spurious argument after citing the *LT-WR* case for the very opposite proposition – that the Commission lacks the power even to "determine" an easement as to property whose owners are before the Commission?

The Staff Analysis does not contain any evidence that the Section 22.24.090.A required "site plans" for all of the affected servient tenements along Will Geer Road have been submitted to or reviewed by the Commission. Thus, even if the Staff were correct in erroneously concluding that Section 22.24.090.A provided the Commission and its Director with more power than the Superior Court to alter the legal relations among neighboring property owners, an express condition, stated in the Section, to the exercise of that power has not been satisfied in this case. Accordingly, Section 22.24.090.A does not permit the Commission to issue a CUP which violates the neighbors' easements and effects a zoning violation..

Finally, the Staff Analysis argues that the issue of whether the CUP should issue, despite violating the neighbors' easement rights, is actually an issue for the Superior Court: "whether commercial use of the road exceeds the scope of the easement is a legal question for a court to resolve, not one for the staff or the Regional Planning Commission to determine." Based upon this erroneous contention, the Staff Analysis concludes that the Commission need not consider this issue -- and may issue the CUP anyway. That conclusion is incorrect. The Commission is bound by applicable law, including the common law of California, and may not act in excess of its jurisdiction or otherwise violate California law. The Staff Analysis cites the *LT-WR* case for this very principle – the powers of a state commission are limited by law.

As stated in my February 15, 2015 letter, if a CUP violates applicable zoning law, it is beyond the authority of the issuing agency to issue, as *Neighborhood Action Group v. County of Calaveras,* (1984) 156 Cal.App.3d 1176, 1184, 203 Cal.Rptr. 401 holds.

> Although use permits are not explicitly made subject to a general plan meeting the requirements of state law, that condition is necessarily to be implied from the hierarchical relationship of the land use laws. To view them in order: a use permit is struck from the mold of the zoning law (§ 65901); the zoning law must comply with the adopted general plan (§ 65860); the adopted general plan must conform with state law (§§ 65300, 65302). The validity of

> the permit process derives from compliance with this hierarchy of planning laws. These laws delimit the authority of the permit issuing agency to act and establish the measure of a valid permit.
>
> ***
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> Put another way, the scope of authority of the agency to enact a general plan and zoning ordinances and to apply them is governed by the requirements of state law. A permit action taken without compliance with the hierarchy of land use laws is *ultra vires* as to any defect implicated by the uses sought by the permit. [Emphasis added.]

Bartholomew v. Staheli, (1948) 86 Cal.App.2d 844, 195 P.2d 824, previously cited in my earlier letter and not addressed or mentioned in the Staff Analysis, is a California controlling case on the issues here presented. This Commission must comply with *Bartholomew,* which holds that overburdening easements, by enlarging the use from residential use to commercial use, violates the rights of the owners of the servient tenements.

Teachers Insurance and Annuity Association v. Furlotti, (1999) 70 Cal.App.4th 1487, 83 Cal.Rptr.2d 455 and *City & Co. of S.F. v. Safeway Stores, Inc.,* (1957) 150 Cal.App.2d 327, 310 P.2d 68, previously cited in my earlier letter, are the controlling cases in California squarely prohibiting the use of privately owned and lesser zoned easements as access to higher zoned property. That principle prohibits the Kennel's use of A-1 zoned easements over its neighbors' lands to serve its higher zoned A-2 commercial enterprise.

This Commission lacks the discretion or the power to ignore California common law, as embodied in these and other cases cited in my earlier letter. The Staff's attempt to ignore and evade the effect of these and other controlling cases which prohibit issuance of the requested CUP renders the Staff findings legally infirm. Any CUP, based upon such findings, will be equally infirm.

Respectfully submitted,

Thomas Doniger

cc:
Travis Seaward, Regional Planner
Gina Natoli, Supervising Regional Planner
County Counsel, c/o Commission Services

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July 28, 2015

The Honorable Esther L. Valadez, Commissioner
The Honorable Stephanie Princetl, Commissioner
The Honorable David W. Louie, Commissioner
The Honorable Curt Pedersen, Commissioner
The Honorable Pat Modugno, Commissioner
Department of Regional Planning
320 W. Temple Street, 13th Floor
Los Angeles, California 90012

Re: **Project No. R2013-02633-(3); CUP No. 201300135 Conditional Use Permit to Allow and Expand Maintenance of a Dog Kennel at 1558 Will Geer Road, Topanga, California, Petitioned by Randall Neece and Joseph Timko. .**

Dear Commissioners:

I am again writing you on behalf of L. Elsie, LLC (the "LLC"), the record owner of the parcel of real property commonly described as 1370 Will Geer Road, Topanga Canyon, California 90290 (the "Elsie property"). The purpose of this letter is to report to you with respect to a recent discussion I had with County Counsel regarding the above-referenced application for a permit. I requested an opportunity to discuss the legal points regarding access to the subject Kennel with County Counsel because the May 13, 2015 public hearing did not provide a full opportunity to discuss those legal points, as speakers are limited to three minutes.

Prior to my conversation with Mr. Joseph Nicchitta of County Counsel, I wrote him an email, a copy of which is attached to this letter, for your review. Mr. Nicchitta and I enjoyed a cordial and informative discussion regarding the legal points I previously raised by letters and which were raised, very briefly, in the hearing with respect to the above-referenced project.

I urge each of you to have a full discussion with County Counsel regarding whether the Commission has the legal power – jurisdiction – to issue the requested permit. While I will not presume to speak for Mr. Nicchitta, nor do I claim to be privy to County Counsel's advice to his Commissioner clients, you should be fully advised as to the legal issues before acting on the Kennel's application. Indeed, it is your duty to be fully advised.

I believe that you will be advised by your counsel, contrary to the arguments advanced to defend the legality of issuance of the permit at the hearing, that: (1) County Code §22.24.090.A does not provide the County with a "safe harbor" to grant the requested permit, despite the violation of the neighboring easements; (2) *LT-WR, LLC v. California Coastal Commission*, 151 Cal. App. 4th 770 (2007), the case relied upon by the applicants, does not support issuance of the subject permit and is irrelevant to the application before the Commission; (3) The Commission is required to both recognize the existence and scope of the neighboring recorded easements and to refrain from issuing permits which violate those recorded easements; and (4) The Commission must follow the law of California which prohibits the granting of the requested permit and, therefore, would make issuance of such a permit an *ultra vires* act by the Commission.

In short, unlike the Commission which originally issued a permit to the Kennel in 2003 (the applicable 2003 Findings show that the access issues raised here were not then identified or addressed), you and your counsel have been apprised of the access issues and have the applicable law and controlling legal authorities before you. You have no choice but to follow them.

Respectfully submitted,

Thomas Doniger

cc:
Travis Seaward, Regional Planner
Gina Natoli, Supervising Regional Planner
County Counsel, c/o Commission Services
Joseph Nicchitta, Esq.

Sotheby's
INTERNATIONAL REALTY

369 S. Topanga Canyon Blvd.
Topanga, CA 90290
T 310.457.1753
F 310.589.0887

May 12, 2015

To Whom It May Concern:

Re; Conditional Use Permits

I have been selling real estate in Topanga Canyon for 30 years. I have sold properties with CUPs and I have sold properties adjacent to CUPs. The negative impact on properties adjacent to CUPs is significant. These properties sell for approximately 15% less than comparable properties, that are not adjacent to CUP properties. Some conditional uses have even more impact as the uses can be more of a nuisance. Please call if you have any questions.

Sincerely,

Jon Saver

Jon Saver

Sothebys International Realty

310 989 -0839

PHOTO OF KENNEL RECYCLING BIN, MARCH, 2014